

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

KENNETH COLVIN, JR.,

Plaintiff,

File No. 2:09-CV-96

v.

HON. ROBERT HOLMES BELL

MICHAEL MARTIN,

Defendant.

\_\_\_\_\_ /

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court on Plaintiff Kenneth Colvin, Jr.'s objection to the Magistrate Judge's September 18, 2009, order granting Defendant's motion to stay discovery. (Dkt. No. 60, Obj.)

Because the order staying discovery (Dkt. No. 48) addresses a non-dispositive pretrial matter, the Court will construe Plaintiff's objection as an appeal from the order. A magistrate judge's resolution of a non-dispositive pretrial matter will be modified or set aside on appeal only if it is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); W.D. Mich. LCivR 72.3(a). The clearly erroneous standard does not entitle a reviewing court to reverse the finding of the trier of fact simply because it would have weighed the evidence differently or would have decided the case differently. *Anderson v. Bessemer City*, 470 U.S. 564, 573 (1983). "Rather, a reviewing court must ask whether, based on the entire evidence, it is 'left with the definite and firm conviction that a mistake

has been committed.’” *Easley v. Cromartie*, 532 U.S. 234, 242 (2001) (citing *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)).

Plaintiff objects to the order staying discovery because it was entered before Plaintiff had an opportunity to file his response to the motion in accordance with the briefing schedule outlined in the Local Rules. *See* W.D. Mich. LCiv.R 7.3(c).

Plaintiff has not cited any authority establishing an absolute right to respond to a motion to stay discovery, and the Court is aware of none. In fact, the Local Rules provide that the Court may shorten any time limit established by the rules without prior notice. W.D. Mich. LCiv.R 7.1(c). The Court finds that the Magistrate Judge’s order staying discovery pending disposition of Defendant’s motion for judgment as a matter of law is not clearly erroneous or contrary to law even though it was entered before the usual time period for responding to such a motion had lapsed. Moreover, the Court has reviewed Plaintiff’s response to the motion to stay (Dkt. Nos. 60, 61), filed after the order was entered, and the Court finds nothing in the response to suggest that the order staying discovery was erroneously entered. Accordingly,

**IT IS HEREBY ORDERED** that upon review of Plaintiff’s appeal (Dkt. No. 60), the Magistrate Judge’s Order staying discovery (Dkt. No. 48) is **AFFIRMED**.

Dated: December 9, 2009

/s/ Robert Holmes Bell  
ROBERT HOLMES BELL  
UNITED STATES DISTRICT JUDGE